

March 31, 2020

***VIA ELECTRONIC MAIL AND DELAFILE***

Dr. Rajnish Barua  
Executive Director  
Delaware Public Service Commission  
861 Silver Lake Boulevard, Suite 100  
Dover, DE 19904

**Re: Docket No. 20-0149 – Order Opening Docket**

Dear Dr. Barua:

In connection with the above referenced Docket, Delmarva Power & Light Company (“Delmarva”) is requesting that the attached form of opening Order be placed on the Delaware Public Service Commission’s agenda for its meeting scheduled for April 1, 2020. Delmarva filed its application and testimony in this Docket on March 6th, with a reasonable expectation that the opening Order would be issued at the Commission’s March 18, 2020 meeting, and, if not, then certainly by no later than the April 1, 2020 meeting. While we have attempted to work with Commission Staff (“Staff”) and the Division of the Public Advocate (“DPA”) on the form of Order, they appear to have taken the position that they will not agree to having the Order move forward until they have received responses to two separate Minimum Filing Requirement (“MFR”) deficiency letters, responses to which are not due, per 26 *Del. Admin. C.* §1002A-1.5, until April 3, 2020. From Delmarva’s perspective, this position is wholly inconsistent with the provisions of 26 *Del. Admin. C.* §1002A-1.5, as well as the long-standing practice of the Delaware Public Service Commission (“Commission”).

To be clear, it is not set forth in the Regulations, nor has it ever been Commission precedent, to require the resolution of alleged MFR deficiencies before a rate case docket is opened. Specifically, in the multiple rate cases filed by Delmarva from 2014 to date, only one, Docket No. 20-0150, involved the opening of the docket subsequent to the filing of Delmarva’s response to the MFR deficiency letter issued by Commission Staff. Even then, that docket was still opened less than one month after the filing of Delmarva’s application, *i.e.*, at the first

Commission meeting after the Gas application was filed. The timing of the opening order in Docket No. 20-0150 was not due to a refusal by Staff to place the opening order for the docket on the agenda until the MFR deficiency responses were received.<sup>1</sup> The DPA apparently also believes that it has the authority to issue MFR deficiency letters and issued one to Delmarva in this Docket, by letter dated March 20, 2020.

The provisions of 26 *Del. Admin. C.* §1002A-1.5 provide as follows:

“The **Commission Staff** will review all filings for compliance with the format and instructions furnished herein and, within fifteen (15) days after the date of filing, specifically identify any noncompliance with such format and instructions, and immediately request the **Commission’s Secretary** to promptly notify the utility of the alleged defects in compliance.” (*emphasis added*)

Nevertheless, in this Docket, DPA directed a letter to Delmarva setting forth what the DPA alleged to be MFR deficiencies and filed the letter in *Delafile*. Nowhere in the Regulations applicable to the Commission or the DPA is the DPA given the authority to assert alleged deficiencies and then issue an MFR deficiency notice. This is not to say that the DPA cannot raise issues or seek additional information. The DPA can certainly do so, but the proper time and form for doing that is through data requests served during the discovery phase of the docket.

Lastly, there is no prejudice to Staff or DPA in opening the Docket on April 1 (nearly one month after the Company’s filing). If the matter is deferred to the Commission’s April 22nd meeting, almost two months will have passed between Delmarva’s filing and before work in the case commences. In the event that there is a determination that the MFR deficiencies have not been appropriately addressed, 26 *Del. Admin. C.* §1002A-1.5 provides a very specific remedy.

Delmarva maintains that it is important to open the Docket without further delay so that the Company is not later prejudiced, and so that Staff and DPA can proceed to retain their consultants, a procedural schedule can be set, substantive discovery can begin in earnest, and the parties can proceed forward with this case in a timely and orderly fashion. Accordingly, we

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<sup>1</sup> For the Gas case (20-0150), Staff filed its deficiency letter on March 5 which included minimal substantive requests, to which Delmarva responded on March 10. On March 16, Delmarva provided Voluntary Early Discovery responses with attachments. On March 17, Delmarva filed its supplemental filings to update the test period, and on March 18, Delmarva filed Native format files of the MFRs, the Gas Workpapers, and the Schedules related to Direct Testimony. On March 27, Delmarva provided DPA’s consultants with unrestricted access to the confidential CCOSS models.

Despite the delays set forth herein, Delmarva has also made significant efforts to progress this Electric case: on March 23, Delmarva provided Voluntary Early Discovery responses with attachments; on March 25, Delmarva filed Native format files of the MFRs, the Electric Workpapers, Adjustments and Backup, and the Schedules related to Direct Testimony; and on March 27, Delmarva provided DPA’s consultants with unrestricted access to the confidential CCOSS models.

respectfully request that the attached form of opening Order be placed on the Commission's agenda for its meeting scheduled for April 1, 2020.

Very truly yours,

*/s/ Pamela J. Scott*

Pamela J. Scott

Enclosure

cc: James McC. Geddes, Esquire (w/enclosure)  
Regina A. Iorii, Esquire (w/enclosure)  
Connie McDowell (w/enclosure)  
Andrew Slater (w/enclosure)